SANJIV

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 528 OF 1998

1 Mrs. Alka Mishra,
Senior Divisional Personnel Officer,
Central Railway, having her office at
Divisional Railway Manager's Office, at
Chhatrapati Shivaji Terminus,
Mumbai

2 Shri C. P. Sharma,
Senior Divisional Commercial Manager,
Central Railway, having his office at
Divisional Railway Manager's Office,
Central Railway, Chhatrapati Shivaji
Terminus, Mumbai. ....Petitioners

Vs.

1 The State of Maharashtra

2 Tikam Sevaram Ahuja, R/o. 6, Sai Krupa
Apartment, near Sadhubella School,
Ulhasnagar, Taluka Ulhasnagar,
District Thane. ....Respondents

Mr Suresh Kumar for petitioners.

Mr. Ramesh Rammurthy for respondent-2.

Ms. M. H. Mhatre, APP for the State.

CORAM : SMT. RANJANA DESAI, J.

DATE : 23TH NOVEMBER, 2006.

ORAL JUDGMENT .:-

1. The petitioners are original accused-2 and 3 in Criminal Case No. 7 of 1998 pending on the file of Jt. Civil Judge, Junior Division and Judicial Magistrate, First Class at Ulhasnagar. In this petition, the petitioners have prayed that the process issued against the petitioners in this case may be quashed and set aside.

2. The facts which give rise to the present writ petition may be shortly stated.

Respondent-2 is the original complainant. Respondent-2 at the relevant time was working in the Central Railway as Head Luggage Clerk at Chhatrapati Shivaji Terminus, Mumbai. It appears that he was compulsorily retired by the Central Railway on 12/02/1986. Being aggrieved by this order, respondent-2 filed Original Application No. 927 of 1988 in the Central Administrative Tribunal, Mumbai. The Central Administrative Tribunal, Mumbai

quashed the said order on 14/12/1993 and remanded the matter to the concerned authority for deciding it afresh. It appears that on 16/01/1995, one Shri K. N. Tripathi, the then Divisional Personnel Officer, wrote a letter to respondent-2. The relevant portion of the said letter reads as under:-

> ***"With reference to your letter dated 29/06/1994 to the Minister for Pension, this is to advise you that you have been removed from Railway Service under letter No. BB/C/247/G / 10/84 dated 12/02/1986. Therefore, you are not eligible for any pension and pensionary benefits."***

3. Obviously, in view of the fact that the Central Administrative Tribunal has set aside the order of compulsory retirement dated 12/02/1986, the statement made in this letter that respondent-2 had been removed from the Railway service was wrong. It appears that thereafter by a subsequent letter dated 17/05/1995 Mr. Tripathi conveyed to respondent-2 that the letter dated 16/01/1995 was written inadvertently and that respondent-2 was not, in fact, removed from the service. Respondent-2 filed a complaint in the Court of Judicial Magistrate, First Class, Ulhasnagar against Mr. Tripathi and the present petitioners. Mr. Tripathi was arraigned as accused-1 and

the petitioners are arraigned as accused-2 and 3 respectively. The complaint was filed under Sections 166, 167, 109, 110 & 113 r/w Section 34 of the Indian Penal Code. In this complaint the learned Magistrate issued a process. Being aggrieved by the issuance of process, the petitioners have approached this court.

4. I have heard, at some length, Mr. Suresh Kumar learned counsel appearing for the petitioners and Mr. Ramesh Rammurthy, learned counsel for respondent-2 and the learned APP appearing for respondent 1. Mr. Suresh Kumar contended that the learned Magistrate erred in issuing process against the petitioners. He submitted that the complainant has relied on the letter dated 16/01/1995 addressed by Mr. Tripathi, original accused-1 making a wrong statement that respondent-2 was dismissed. However, admittedly, from 18/11/1994 to 17/07/1995, petitioner-1, who was at the relevant time holding the post of Senior Divisional Personnel Officer was on maternity leave. Therefore, she could never have been a party to the writing of this letter. There is nothing to indicate that the letter is written at the instance of petitioner-1. The learned counsel submitted that petitioner-2 is also not concerned with the

writing of this letter. He was the appellate authority and, as such, he had an occasion to deal with the disciplinary proceedings initiated against respondent-2. However, he could not be associated with writing of the said letter dated 16/01/1995. The learned counsel submitted that the issuance of process against the petitioners, therefore, indicates sheer non application of mind. He drew my attention to the complaint and contended that if the complaint is taken at its face value, no offence is made out against the petitioners. He submitted that the process issued against the petitioners be, therefore, quashed.

5. Mr. Rammurthy did not dispute the fact that petitioner-1 was on leave from 18/11/1994 to 17/07/1995. He also did not dispute the fact that petitioner-2 was the appellate authority.

6. I have carefully read the complaint in question. The basic grievance of respondent 2 is in respect of the letter dated 16/01/1995. According to him, it is written by accused-1 Mr. Tripathi. It is signed by Mr. Tripathi. There can be no dispute about the fact that this letter wrongly states that respondent 2 was removed from service. Subsequently Mr. Tripathi has written another letter

stating that this letter is written inadvertently. Therefore, the responsibility of sending this letter to respondent-2 lies on Mr. Tripathi. So far as respondent-1 is concerned barring vague statement that accused-1 by consent of accused-2 sent the letter dated 16/01/1995 and that the said letter was written by accused-1 and 2 to wreck vengeance against respondent 2 because he is an active unionist, nothing more is said in this complaint. No particulars are given as to how petitioner-1 is instrumental in sending this letter. Considering the fact that admittedly petitioner 1 was on leave from 18/11/1994 to 17/07/1995, in my opinion, the process issued against her needs to be quashed.

7. Similar is the case of petitioner-2. Petitioner-2, at the relevant time, was the appellate authority and though he may be associated with the disciplinary proceedings initiated against respondent-2 from that it cannot be concluded that he prompted Mr. Tripathi to write this letter to respondent-2. The complaint is vague as regards the role of petitioner-2 in persuading Mr. Tripathi to write letter dated 16/01/1995 to respondent-2. The complaint does not state clearly why petitioner 2 should do so.

8. In my opinion, before issuance of the process, the learned Magistrate ought to have applied his mind to find out whether really the complaint discloses any offence against the petitioners. Issuance of process on such vague and inadequate pleadings, certainly causes hardship to the people. In ***Indian Oil Corporation Vs. NEPC India Ltd. & Ors., (2006) 6, Supreme Court Cases 736,*** the Supreme Court has laid down principles relating to exercise of jurisdiction under Section 482 of the Code to quash complaints and criminal proceedings. The Supreme Court has stated that the complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. The Supreme Court has further stated that for that purpose the complaint has to be examined as a whole, but without examining the merits of the allegations. It is further observed that, neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint. In my opinion, if the present complaint is

examined in the light of the observations made by the Supreme Court in ***Indian Oil Corporation's case (supra),*** it must be held that the present complaint so far as the petitioners are concerned is a clear abuse of the process of the court because if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not constitute any offence against the petitioners.

9. Hence the following order.

The process issued against the petitioners Mrs. Alka Misra and Shri C. P. Sharma by the Judicial Magistrate, First Class, Ulhasnagar in Case No. 7/1998 under Sections 166, 167, 109, 110 and 113 r/w Section 34 of the Indian Penal Code is quashed qua them i. e., Mrs. Alka Misra and Shri C. P. Sharma. The stay granted earlier is vacated. The trial Court shall proceed with Case No. 7/1998 as against accused 1 Mr. Tripathi. Office is directed to communicate this order to the trial court forthwith. Petition is disposed of.

(SMT. RANJANA DESAI, J)